United States Department of Labor
Employees' Compensation Appeals Board

V.G., Appellant	)	
and	)	**Docket No. 15-1750**
	)	**Issued: June 15, 2016**
DEPARTMENT OF THE NAVY,	)	
Bremerton, WA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 18, 2015 appellant filed a timely appeal from a July 28, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish increased hearing loss causally related to her federal employment.

FACTUAL HISTORY

On May 5, 2015 appellant, then a 56-year-old pipefitter leader, filed an occupational disease claim (Form CA-2) alleging that her bilateral hearing loss was caused by factors of her

[1] 5 U.S.C. § 8101 *et seq.*

federal employment. She indicated that she first became aware of her condition and its relationship to her employment on January 2, 2004.[2]

By letters dated May 8, 2015, OWCP informed appellant and the employing establishment of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days.

In response, OWCP received appellant's work history, job summary, notification of personnel action, employing establishment audiograms, and other medical records.

In a May 13, 2015 statement, appellant related that she had been exposed to the same employment-related noise from November 6, 2007 to the present. She indicated that she had not changed jobs and was still exposed to noise at work. Appellant noted that she first became aware of her hearing loss on January 2, 2004 and her hearing tests showed hearing loss. She referenced her earlier claim, File No. xxxxxx125, which was accepted for bilateral hearing loss and hearing aids. Appellant advised that she had no hobbies and had yearly hearing examinations.

The June 24, 2015 statement of accepted facts in the present claim, noted that from August 1981 to October 1983, she worked as a clerk typist. Additionally, from October 1983 to May 1988, appellant worked as a radar clerk, and was exposed to one hour per week of noise exposure when entering the production area where trades were working. No hearing protection was used. From May 1988 to the present, appellant worked as a pipefitter where she was exposed to noise from ships, vents, forklifts, blowers, high pressure hoses, motors, grinders, needle guns, cranes, and shot blast for eight hours per day with hearing protection. The statement noted that, under File No. xxxxxx125, OWCP had accepted bilateral hearing loss.

On June 26, 2015 OWCP referred appellant, together with the medical record and a statement of accepted facts, to the same Dr. Gerald Randolph, a Board-certified otolaryngologist, for another second opinion evaluation.

In his July 20, 2015 report, Dr. Randolph noted appellant's history of injury and treatment. He advised that the earliest audiogram available was May 21, 1984 and revealed bilateral, relatively flat sensorineural hearing loss ratable at that time as 0 percent in the right ear and 9.375 percent in the left ear. Dr. Randolph noted that the hearing loss did not have an audiometric configuration compatible with hearing loss due to noise exposure. He explained that since 1984, appellant's hearing continued to degenerate in a manner inconsistent with hearing loss due to noise exposure.

Dr. Randolph opined that appellant had a current rate of hearing loss of 33.75 percent in the right ear and 33.75 percent in the left ear, or a binaural hearing loss ratable at 33.75 percent, with no additional rating for tinnitus indicated. He noted that hearing loss was in excess of what would normally be predicated on the basis of presbycusis and, if hearing protection had not been

[2] The record reflects that appellant had filed a previous claim for a schedule award (Form CA-7) under OWCP File No. xxxxxx125). OWCP accepted occupational hearing loss and referred appellant to Dr. Gerald Randolph, a Board-certified otolaryngologist and second opinion physician, for an impairment evaluation. Based on Dr. Randolph's report, OWCP granted appellant a schedule award for 28 percent binaural hearing loss on March 10, 2008. Dr. Randolph had found that appellant's hearing loss was work-related and competent to have aggravated her preexisting congenital hearing condition. He recommended bilateral hearing aids.

utilized, was of sufficient intensity and duration to have caused the hearing loss. Dr. Randolph explained that appellant's progressive hearing loss since 1984 was in a manner inconsistent with hearing loss due to his work-related noise exposure and showed evidence of being present or getting worse during the period of time that she was not employed in a noise hazard area with a possible exception of hearing protection areas or one hour per week. He diagnosed sensorineural hearing loss, bilateral. Dr. Randolph checked the box marked "no" in response to whether the hearing loss was due in part or all, to noise exposure encountered in appellant's federal employment. He recommended continued use of bilateral hearing aids and recommended that she be referred to an appropriate otolaryngologist to further evaluate the cause of the progressive nature of her hearing loss.

Dr. Randolph also submitted results of audiometric testing performed by a certified audiologist who found that appellant sustained hearing thresholds of the right ear at 500, 1,000, 2,000, and 3,000 cycles per second (cps) of 30, 50, 55, and 55 decibels (dBs), respectively and to the left ear at 500, 1,000, 2,000, and 3,000 cps of 30, 50, 55, and 55 dBs, respectively.

By decision dated July 28, 2015, OWCP denied appellant's claim for compensation as the medical evidence of record failed to demonstrate that the claimed hearing loss was causally related to the employment-related noise exposure.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by a claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the

[3] *Gary J. Watling*, 52 ECAB 357 (2001).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[4]

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment, nor the belief that the condition was caused, precipitated or aggravated by his employment, is sufficient to establish a causal relationship.[5] The mere fact that a disease or condition manifests itself or worsens during a period of employment[6] or that work activities produce symptoms revelatory of an underlying condition[7] does not raise an inference of causal relation between the condition and the employment factors.

A claim for an increased schedule award may be based on new exposure.[8] Absent any new exposure to employment factors, a claim for an increased schedule award may also be based on medical evidence indicating that the progression of an employment-related condition has resulted in a greater permanent impairment than previously calculated.[9]

ANALYSIS

The Board finds that this case is not in posture for decision.

It is not disputed that appellant was exposed to work-related noise from 1983 to 1988 as a radar clerk and from 1988 to the present as a pipefitter. Further, the record reflects that OWCP accepted her claim for noise exposure under a prior claim, File No. xxxxxx125, and she had been awarded a schedule award in the amount of 28 percent for binaural hearing loss on March 10, 2008.

A claimant may file a claim for an increased schedule award based on new exposure or based on a progression of hearing loss due to employment-related noise exposure. In 2008, OWCP accepted employment-related bilateral hearing loss. Although appellant was requesting an increased schedule award for additional hearing loss, OWCP developed the claim as a new occupational disease claim.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done. Once OWCP undertakes development of the medical evidence, it has the responsibility to do so in a proper manner. The July 20, 2015 report from Dr. Randolph conflicts with his prior finding in File No. xxxxxx125 and is, therefore, insufficient to resolve the issue of whether appellant has increased

[4] *Solomon Polen*, 51 ECAB 341 (2000).

[5] *Robert G. Morris*, 48 ECAB 238-39 (1996); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *William Nimitz, Jr., id.*

[7] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

[8] *A.A.*, 59 ECAB 726 (2008); *Tommy R. Martin*, 56 ECAB 273 (2005); *Rose V. Ford*, 55 ECAB 449 (2004).

[9] *James R. Hentz*, 56 ECAB 573 (2005); *Linda T. Brown*, 51 ECAB 115 (1999).

employment-related hearing loss. The Board finds that OWCP has not properly discharged its responsibility to develop the record and the case must be remanded for further development of the medical evidence and a reasoned opinion regarding whether appellant has an increased hearing loss due to her accepted employment injury.[10] Dr. Randolph should be provided the record from the previous case, File No. xxxxxx125, as well as the current case and be requested to provide a supplemental opinion as to whether appellant has an increased hearing loss due to employment noise exposure. Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2015 decision of the Office of Workers' Compensation Programs is set aside and remanded for further action consistent with this decision.

Issued: June 15, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[10] *Richard F. Williams*, 55 ECAB 343 (2004).